IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
November 14, 2006 Session

WILLIAM LYNN PITTMAN, DEANA RENAE PITTMAN SLEMP, DAVID PITTMAN, and SHEILA PITTMAN JOHNSON
v.
ELIZABETH PITTMAN, BETTY KATE PITTMAN KING, and DOROTHY LOUISE PITTMAN ROBINSON

An Appeal from the Chancery Court for Marion County
No. 6784 Jeffrey F. Stewart, Chancellor

No. M2006-01256-COA-R3-CV - Filed on April 24, 2007

This case involves theories of equitable trusts and undue influence with respect to real property. The grandparents owned a large farm. During their lifetime, they conveyed small parcels of the farm property to their children and grandchildren. In March 1989, the grandparents executed a deed conveying all remaining interests in the farm property to three of their children and a daughter-in-law. At the same time, the grandparents entered into a contract with the grantee children and daughter-in-law, reserving the right to control the property during their lives. The grandparents did not convey any interest in the property to the plaintiffs, the four children of a deceased son. In November 1993, the grandmother executed a will, purporting to devise the farm property, in part to the plaintiff grandchildren. The grandparents died. In the instant case, the plaintiff grandchildren sought to take an interest in the farm property under the grandmother's will, alleging that the March 1989 deed and contract reserving the right to control the property gave rise to a resulting or constructive trust, that the March 1989 deed was obtained by undue influence, and that the March 1989 deed was void due to a defective acknowledgment. After a bench trial, the trial court found that the plaintiffs failed to prove either an equitable trust or undue influence and that, as between the parties, the defective acknowledgment on the deed did not affect the validity of the March 1989 conveyance. The plaintiffs now appeal. We affirm.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court is Affirmed.

HOLLY M. KIRBY, J., delivered the opinion of the Court, in which W. FRANK CRAWFORD, P.J., W.S., and WILLIAM C. KOCH, JR., P.J., M.S., joined.

Charles N. Griffith, Waverly, Tennessee, for Intervening Plaintiffs/Appellants William Lynn Pittman, Deana Renae Pittman Slemp, David Pittman, and Sheila Pittman Johnson.

J. Harvey Cameron, Jasper, Tennessee, for Defendants/Appellees Elizabeth Pittman, Betty Kate Pittman King, and Dorothy Louise Pittman Robinson.

OPINION

In 1942, Dan Pittman, Sr., ("Mr. Pittman") and his wife, Ida Pittman ("Mrs. Pittman"), purchased a 148-acre farm located in Marion County. Mr. and Mrs. Pittman lived on the farm until their deaths in April 1994 and September 2002, respectively. During this time, and with the help of their children and grandchildren, Mr. and Mrs. Pittman cultivated the land, harvested crops, and raised cattle on the farm property. Mr. Pittman referred to this property as his "dynasty," and throughout their lives, Mr. and Mrs. Pittman took pains to ensure that the property remained in their family.

Over the course of three decades, Mr. and Mrs. Pittman conveyed small parcels of the farm property to their children and grandchildren. Most of these conveyances took place between August 7, 1957 and May 9, 1988. Although the conveyances that occurred prior to 1988 are not at issue in this case, the transfer of two particular parcels are pertinent as background to the instant dispute.

On November 26, 1963 and March 3, 1964, Mr. and Mrs. Pittman conveyed two tracts of the farm property, a 5.05-acre tract and a 0.37-acre tract, to their son, George Pittman, and his wife, Barbara Pittman. On the larger tract of land, George and Barbara Pittman built a house, which stood approximately 150 yards away from Mr. and Mrs. Pittman's home. They lived together in that house and raised four children there, until George Pittman died in 1978.

Shortly after George Pittman died, Barbara Pittman remarried. Her remarriage so soon after their son's death dismayed Mr. and Mrs. Pittman. Barbara Pittman also became involved in an insurance fraud case, unrelated to the farm property. Several years later, on October 16, 1987, Barbara Pittman sold the two tracts of land to a party outside the Pittman family in order to satisfy a debt arising from the insurance fraud. The sale of a portion of the farm property to someone outside the Pittman family devastated Mr. and Mrs. Pittman and embittered them towards their former daughter-in-law.

Two years later, Mr. and Mrs. Pittman discovered that the telephone company planned to construct an improvement on the 0.37-acre tract of land conveyed by their former daughter-in-law, Barbara Pittman, to a third party. In order to clear the title to the land for the telephone company's project, Mr. and Mrs. Pittman were required to execute a quitclaim deed to the third party. The quitclaim deed was executed on March 10, 1989.

Four days later, on March 14, 1989, Mr. and Mrs. Pittman executed and recorded a warranty deed. In this warranty deed, Mr. and Mrs. Pittman conveyed all of their remaining interests in the

farm property to their two daughters, Betty Kate Pittman King ("Betty Pittman") and Dorothy Louise Pittman Robinson ("Dorothy Pittman"), their son, Daniel Pittman, Jr. ("Daniel Pittman"), and their son's wife, Elizabeth Pittman.

On the same date, March 14, 1989, Mr. and Mrs. Pittman entered into a contract with the grantees of the warranty deed. The contract stated that, despite the warranty deed, Mr. and Mrs. Pittman would continue to live on the farm property and to control it:

> [S]aid deed . . . dated the 14th day of March, 1989, and said conveyance is made to our two daughters and our son . . . and his wife, under the conditions that we, Dan Pittman and Ida Pittman, live, maintain, control, take any and all profits and/or benefits and uses from our farm and home so long as either of us shall live, and maintain the right to do so unless released by us in writing.
>
> That our two daughters and son and daughter-in-law hereby agree that they will not interfere in any manner with our operation of our farm and home including any income and/or profits, and/or operations of said farm in any manner whatsoever so long as both Dan Pittman and Ida Pittman shall live.

Shortly after the execution of the March 14, 1989 warranty deed and contract, Mr. and Mrs. Pittman gave monetary gifts to the four children of their deceased son, George Pittman. The four grandchildren, William Lynn Pittman ("William Pittman"), Deana Renea Pittman Slemp ("Deana Pittman"), David Dewayne Pittman ("David Pittman"), and Bobby Ken Pittman[1] ("Bobby Pittman"), received $2,500 each.[2]

Around the same time, in 1991, a family dispute arose between the elder Pittmans and their daughter Betty Pittman. Betty Pittman's daughter, Lila Cline, and her husband, Terry Cline, lived on the farm property in a mobile home. The Clines asked Mr. Pittman for one acre of the farm property. He declined, and for reasons not pertinent here, the dispute between them intensified. Eventually, Mr. Pittman threatened to bring a detainer action to eject his granddaughter and her husband from the property; as a result, the Clines agreed to leave. After that, Lila Cline's mother, Betty Pittman, became estranged from the Pittmans and did not return to the farm property.

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[1]After executing the warranty deed and contract, Mr. and Mrs. Pittman recorded a previously executed deed, dated May 9, 1988. The deed conveyed approximately one acre of the farm property to Bobby Pittman. On April 11, 1996, a deed of correction was recorded to correct the legal description contained in the original deed to Bobby Pittman.

[2]The conveyances made in the March 14, 1989 warranty deed and the distribution of moneys to the four grandchildren are consistent with a will Mr. Pittman executed three years earlier, on March 7, 1986. In the will, Mr. Pittman provided that, if his wife should predecease him, then the children of his deceased son, George Pittman, should receive $2,500 each. Mr. Pittman devised and bequeathed the remainder of his estate, including the farm property, equally among his other three children: Betty Pittman, Dorothy Pittman, and Daniel Pittman.

On November 11, 1993, Mrs. Pittman executed a Last Will and Testament. The will provided that, if Mr. Pittman should predecease Mrs. Pittman, then Mrs. Pittman's real and personal property, including the farm property, was to be divided into three equal shares, with a one-third share to Elizabeth Pittman, widow of son Daniel Pittman,[3] another one-third share to daughter Dorothy Pittman, and with the four children of her deceased son George Pittman receiving "equal noeties [sic] of their father's one-third (1/3) share."[4] As to her estranged daughter, Betty Pittman, Mrs. Pittman's will stated: "I feel that she has more than received her interest in my property, and since she feels and treats me the way she does . . . I do not intend to leave her anything but my best wishes and hope that she has a good, happy and fruitful life."

In April 1994, not long after the execution of Mrs. Pittman's will, Mr. Pittman died. Mrs. Pittman died years later, in September 2002.

Following Mrs. Pittman's death, her two daughters, Betty Pittman and Dorothy Pittman, filed a complaint against their brother's widow, Elizabeth Pittman, seeking a sale of the farm property and a division of the proceeds. The plaintiffs to this complaint filed notices of voluntary non-suit on February 23, 2004 and March 26, 2004. The trial court, in separate orders, dismissed this complaint without prejudice. Before dismissal of this complaint, the trial court entered an agreed order permitting the children of George and Barbara Pittman to intervene in the original action and file a second lawsuit. Subsequently, on February 5, 2004, Intervening Plaintiffs/Appellants William Pittman, Deana Pittman, David Pittman, and Sheila Pittman Johnson[5] (hereinafter "Plaintiffs")[6] filed a complaint against the three parties to the original action, Defendants/Appellees Betty Pittman, Dorothy Pittman, and Elizabeth Pittman (hereinafter "Defendants").

In this complaint, the Plaintiffs claimed that the warranty deed and contract executed by the elder Pittmans on March 14, 1989, gave rise to a resulting trust,[7] which was terminated when Mrs. Pittman executed her will on November 11, 1993. To support this theory, the Plaintiffs alleged that no consideration was paid under the March 14, 1989 warranty deed, that a separate deed from Mr. and Mrs. Pittman to Bobby Pittman was recorded after the execution of the March 14, 1989

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[3]Daniel Pittman died between January and November of 1993.

[4]"Noeties" is not a word, and it is possible that the drafter intended to use the word "moieties." Moiety can mean a "half" or a "part, portion, or share." ***See*** Bryan A. Garner, *A Dictionary of Modern Legal Usage* 570 (2d ed. 1995); Webster's II New Riverside University Dictionary 762 (1984). Interpretation of Mrs. Pittman's will is not an issue in this appeal, so we express no opinion on it.

[5]Bobby Pittman died prior to the filing of this lawsuit. Sheila Pittman Johnson is the mother of Bobby Pittman's two minor children.

[6]For ease of reference, we will refer to the intervening plaintiffs as "Plaintiffs" throughout the remainder of this Opinion.

[7]The issue of constructive trust was not raised by the pleadings and was apparently tried by implied consent of the parties, see Tenn. R. Civ. P. 15.02 (2005).

instruments, that Betty Pittman remained estranged from her parents after 1993, and that the Defendants sold 0.75 acres of the farm property to an unrelated party on October 21, 1996.[8] The Plaintiffs claimed that Mrs. Pittman's November 11, 1993 will reflected her "wishes" and asked the trial court to find that the ownership interests in the farm property were as set forth in the will.

The Plaintiffs also asserted that the March 14, 1989 instruments were obtained by the undue influence of the Defendants on Mr. and Mrs. Pittman after the death of their son, George Pittman. The Plaintiffs alleged that the Defendants falsely told Mr. and Mrs. Pittman that Barbara Pittman, the widow of their deceased son, would inherit the deceased son's share of the farm property. The Plaintiffs asserted that, in light of Mr. and Mrs. Pittman's desire "to keep the property ownership in their blood kin," these false statements prompted Mr. and Mrs. Pittman to execute the warranty deed, thereby depriving the Plaintiffs of their rightful inheritance.

In separate answers, the Defendants denied these allegations. On March 10, 2005, the Defendants filed a motion for summary judgment, arguing that the March 14, 1989 warranty deed was valid and controlling.

The Plaintiffs later amended their complaint to include an allegation that the March 14, 1989 warranty deed contained a defective acknowledgment and was therefore not legally registered. On August 24, 2005, the Plaintiffs filed a cross-motion for summary judgment, contending that the defective acknowledgment rendered the March 14, 1989 warranty deed null and void.

On September 6, 2005, the parties stipulated to the following: Mr. and Mrs. Pittman signed the March 14, 1989 warranty deed and contract, but Mr. and Mrs. Pittman did not personally appear before the notary public or request that the notary public acknowledge their signatures in their absence. After the stipulation was filed, the Defendants responded to the amended complaint, asserting a defense to the defective acknowledgment in the deed under section 66-26-101 of the Tennessee Code Annotated.[9]

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[8]Defendants do not dispute that they sold 0.75 acres of the farm property to unrelated parties subsequent to the execution of the March 14, 1989 warranty deed and contract. Betty Pittman and Dorothy Pittman testified that the purchasers were neighbors of Mr. and Mrs. Pittman, and that Mr. Pittman had promised the land to them before he died. Dorothy Pittman said that Mrs. Pittman told them to sell the 0.75 acre tract to the neighbors, and that they, along with Elizabeth Pittman, "did exactly what she told" them to do, as required under the March 1989 contract.

[9]This section states:

> All of the instruments mentioned in § 66-24-101 shall have effect between the parties to the same, and their heirs and representatives, without registration; but as to other persons, not having actual notice of them, only from the noting thereof for registration on the books of the register, unless otherwise expressly provided.

T.C.A. § 66-26-101.

Subsequently, the trial court held a hearing on the cross-motions for summary judgment. Both motions were denied, and the cause was set for a bench trial, which occurred on January 5, 2006.

At trial, the Plaintiffs sought to establish that, despite executing the March 14, 1989 deed conveying away their interests, Mr. and Mrs. Pittman continued to claim the farm property as their own. For instance, William Pittman testified as to the dispute between the elder Pittmans and their granddaughter, Lila Cline, which led to the estrangement of Betty Pittman. He said that, during this dispute, Mr. Pittman never mentioned the March 14, 1989 warranty deed, but rather insisted that the farm property "belonged to him . . . and he'd do what he . . . pleased" with it. From this, the Plaintiffs argued that Mr. and Mrs. Pittman did not understand the legal effects of the March 14, 1989 instruments and did not intend to convey any interests in the farm property on that date.[10]

There was also testimony regarding son Daniel Pittman's influence over Mr. and Mrs. Pittman. Grandson William Pittman testified that his uncle visited Mr. and Mrs. Pittman "practically everyday" and that Mr. Pittman "respected [his son's] wishes." He also said that, after execution of the March 14, 1989 deed, son Daniel Pittman told him that the elder Pittmans nevertheless still owned the farm property and would "take care of" the Plaintiffs in their wills. William Pittman conceded, however, that his grandfather, Mr. Pittman, was a strong-willed individual and that "if he had something in his head that's the way it was going to be." Other witnesses characterized both Mr. and Mrs. Pittman similarly.

On the issue of undue influence, the Defendants submitted the deposition testimony of Mr. and Mrs. Pittman's attorney, Charles R. Ables ("Mr. Ables"), who died prior to trial. Mr. Ables befriended the Pittmans in the 1950s, long before he became their attorney. In his testimony, Mr. Ables recalled that in 1989, Mr. and Mrs. Pittman met with him regarding an "extensive type of a deed." He said that they discussed the conveyance to make "certain they knew what they were doing." Mr. Ables said that he "advised them, as [he] normally would anybody . . . [that] [i]f they put their property away into somebody else's name, they were disposing of . . . their property." Mr. Ables, who later drafted Mrs. Pittman's November 11, 1993 will, also testified as to his routine practice with Mr. and Mrs. Pittman, stating: "[W]hen [they] told me what they wanted to do, that's the way they meant it to be done. . . . I didn't do any title work [for them], [and] I didn't look back at any deeds or contracts . . . . They walk in, they say I want to do this . . . And that's how we would do it."

At the conclusion of the proof, the trial court issued an oral ruling:

> Now . . . this dispute basically arises from the fact that [Mr and Mrs. Pittman] conveyed by deed . . . all of their interest in this farm . . . . On that date, which I believe was March 14, 1989, they also executed a contract and in that contract they

[10]Contradictory testimony was presented as to Mr. and Mrs. Pittman's ability to read and understand what they read.

reserved all of the right to control the property and I would say that it was probably more than just a life estate. I think they just absolutely reserved the right to do with it as they pleased as long as they were alive, and so that contract reserved unto them the rights . . . closely akin to what we call a life estate. . . .

We've . . . had this issue arise about the fact that there was not [a proper] acknowledgment of the deed . . . [or] the contract. . . . And I think we dealt with that in the summary judgment issue, although I am not sure the order dealing with the summary judgment specifically refers to it and if I recall the code section that we were dealing with was TCA 66-26-101 . . . . I believe the holding would be that they are bound under that statute not to have a right to really complain or argue about that recordation . . . .

Now . . . what is the effect of this deed versus the . . . Will prepared by [Mrs. Pittman] . . . I think the circumstances surrounding some of this is worthy of mention. Apparently, [Mr. and Mrs. Pittman] had a run-in with one of their grandchildren, [Lila Cline] . . . . and the resolution of all that was that they would remove the personal property, being a mobile home, from the premises of the Pittmans, and so that's not conclusive evidence that [Mr. or Mrs. Pittman] claimed to own the property, but they certainly had a right to complain about anybody putting property on it, because they reserved that right pursuant to that contract . . . .

We also have this question about the deed itself, and the circumstances surrounding the execution of the deed. . . . Reading the deposition of [Mr. Ables], it was fairly clear . . . that [they] knew what they were doing . . . and so I think there's no question that they understood the implications of what they were doing. And I've heard from a lot of people today, and I think even from [William Pittman], who described his grandfather as being a sort of a strong willed individual. I think if I heard strong willed one time, I probably heard it a hundred times today . . . [and] I believe it was pretty clear . . . [that Mrs. Pittman] also agreed that this is what she wanted to do. And also point out . . . there was some history of [George] Pittman having passed away and then his wife lost the family property . . . and [Mr. and Mrs. Pittman] were upset about that, they were almost physically ill about seeing it gone, and that they maybe had as their motivation for doing this that they didn't want to see any other family property lost . . . .

So there was a question then about whether or not there was any undue influence exerted upon them by [son Daniel Pittman] . . . and I find from the facts in this case and from the evidence that there was no undue influence, that they clearly understood what they were doing. . . . It's a little bit hard to explain why Mrs. Pittman . . . might have later thought she could convey this interest by way of a will . . . but it was clear that they had no legal right left, they had transferred that away . . . . Title had passed.

So with regard to whether there was a constructive trust, I don't believe there is fact circumstances that would permit me to construct a trust . . . .

As to whether or not there is a resulting trust, . . . I think under the circumstances that the evidence doesn't show that there was a trust, but really a

> transfer of the property and that they knew what they were doing when they transferred it. . . .

Thus, the trial court determined the defective acknowledgment in the March 14, 1989 deed did not, as between the parties, affect the validity of the conveyance. The trial court also found that the Plaintiffs failed to prove an equitable trust, either resulting or constructive, and that they likewise did not prove undue influence. The trial court entered a final order on February 2, 2006, incorporating its oral ruling and dismissing the Plaintiffs' complaint. From this order, the Plaintiffs now appeal.

On appeal, the Plaintiffs seek to avoid the March 14, 1989 warranty deed and obtain an interest in the farm property by virtue of Mrs. Pittman's will. They argue that the trial court erred in: (1) not finding that the defective acknowledgment in the March 14, 1989 warranty deed rendered the deed null and void; (2) not finding that the execution of the March 14, 1989 warranty deed and contract created a resulting or constructive trust; (3) not finding that the March 14, 1989 warranty deed was obtained through undue influence; and (4) not finding that Mrs. Pittman intended to change the provisions of the March 14, 1989 warranty deed when she executed her will and that she received "inadequate and incorrect legal advice."

Since this case was tried without a jury, our standard of review is *de novo* upon the record, according a presumption of correctness to the trial court's findings of fact, unless the preponderance of the evidence is otherwise. Tenn. R. App. P. 13(d); ***Rawlings v. John Hancock Mut. Life Ins. Co.***, 78 S.W.3d 291, 296 (Tenn. Ct. App. 2001). The trial court's legal conclusions are reviewed *de novo* and accorded no presumption of correctness. ***Ganzevoort v. Russell***, 949 S.W.2d 293, 296 (Tenn. 1997).

We address first the effect of the "defective acknowledgment" in the March 14, 1989 warranty deed. In the trial court below, the parties stipulated that Mr. and Mrs. Pittman signed the deed but did not appear before a notary public to acknowledge their signatures in accordance with applicable statutes. ***See*** T.C.A. §§ 66-22-101, -107, 66-24-101 (2004). Consequently, the Plaintiffs maintain that the March 14, 1989 warranty deed and its recordation should be declared null and void. The trial court held that this issue was governed by section 66-26-101 of the Tennessee Code Annotated, which states:

> All of the instruments mentioned in § 66-24-101 shall have effect between the parties to the same, and their heirs and representatives, without registration; but as to other persons, not having actual notice of them, only from the noting thereof for registration on the books of the register, unless otherwise expressly provided.

T.C.A. § 66-26-101 (2004). The "instruments mentioned" in section 66-24-101 include deeds that convey an interest in real property. T.C.A. § 66-24-101(a)(4), (7), (12) (2004). Thus, under the express terms of section 66-26-101, a warranty deed, although improperly acknowledged and thus not legally registered, has legal effect against "parties to the same, and their heirs and

representatives." T.C.A. § 66-26-101; ***see also Carmody v. Trs. of Presbyterian Church***, 203 S.W.2d 176, 177 (Tenn. Ct. App. 1947) (stating that an acknowledgment "adds nothing to the validity of the deed as between the grantee and those claiming under the grantor"). The Plaintiffs clearly fall within the scope of this statute. Accordingly, we affirm the trial court's decision on this issue.

The Plaintiffs argue next that the trial court erred in declining to find the creation or imposition of a trust, resulting or constructive. Resulting and constructive trusts are equitable devices used by courts to prevent unjust enrichment. ***Story v. Lanier***, 166 S.W.3d 167, 184 (Tenn. Ct. App. 2004).

Our supreme court has described a resulting trust as follows:

> Such a trust is implied by law from the acts and conduct of the parties and the facts and circumstances which at the time exist and surround the transaction out of which it arises. Broadly speaking, a resulting trust arises from the nature or circumstances of consideration involved in a transaction whereby one person becomes invested with a legal title but is obligated in equity to hold his legal title for the benefit of another, the intention of the former to hold in trust for the latter being implied or presumed as a matter of law, although no intention to create or hold in trust has been manifested, expressly or by inference, and there ordinarily being no fraud or constructive fraud involved.

In re Estate of Nichols, 856 S.W.2d 397, 401 (Tenn. 1993) (quoting 76 Am. Jur. 2d *Trusts* § 166 (1992)). A resulting trust generally arises when: (1) "property is conveyed, or devised, on some trust which fails in whole or in part"; (2) "land is conveyed to a stranger without any consideration, and without any use, or trust, declared"; (3) "property is purchased and the title taken in the name of one person, but the purchase price is paid by another"; and (4) a "purchaser pays for the land but takes the title, in whole or in part, in the name of another." ***Roach v. Renfro***, 989 S.W.2d 335, 340 (Tenn. Ct. App. 1998) (quoting ***Browder v. Hite***, 602 S.W.2d 489, 492 (Tenn. Ct. App. 1980)).

Tennessee courts have also described the circumstances under which the court may impose a constructive trust:

> A constructive trust may only be imposed against one who, by fraud, actual or constructive, by duress or abuse of confidence, by commission of wrong, or by any form of unconscionable conduct, artifice, concealment or questionable means, has obtained an interest in property which he ought not in equity or in good conscience retain.

Story, 166 S.W.3d at 185 (quoting ***Intersparex Leddin KG v. Al-Haddad***, 852 S.W.2d 245, 249 (Tenn. Ct. App. 1992)). In Tennessee, constructive trusts have been imposed under the following circumstances:

> (1) where a person procures the legal title to property in violation of some duty, express or implied, to the true owner; (2) where title to property is obtained by fraud, duress or other inequitable means; (3) where a person makes use of some relations of influence or confidence to obtain the legal title upon more advantageous terms than could otherwise have been obtained; and (4) where a person acquires property with notice that another is entitled to its benefits.

Myers v. Myers, 891 S.W.2d 216, 219 (Tenn. Ct. App. 1994) (citations omitted).

From our review of the record, the proof in no way supports the Plaintiffs' assertion of a resulting trust. As to the argument that a constructive trust should be imposed, the Plaintiffs contend that Mr. and Mrs. Pittman's actions after executing the March 14, 1989 deed were inconsistent with an understanding that they had conveyed away their property, noting that they continued to treat the farm property as if it belonged to them, and even going so far as to say that "no written document reserved that power for them." This last assertion is puzzling indeed in light of the contract that Mr. and Mrs. Pittman executed simultaneously with the warranty deed, reserving the right to "live, maintain, control, take any and all profits and/or benefits and uses from [their] farm and home so long as either of [them] shall live."

Mr. and Mrs. Pittman's actions and the circumstances surrounding the March 14, 1989 transaction establish that they understood the implications of the documents executed. The record reflects that the elder Pittmans consistently took measures to ensure that the farm property stayed in their family. After losing a portion of the property to an unrelated party through the actions of Barbara Pittman, they executed the March 14, 1989 warranty deed to make certain that it stayed in the family, while simultaneously executing the contract giving them control during their lives. As noted by the trial court, the testimony of their attorney, Charles Ables, strongly supports the conclusion that Mr. and Mrs. Pittman were duly informed of the legal consequences of the documents signed on March 14, 1989. Furthermore, the trial court did not find that Daniel Pittman fraudulently procured the March 14, 1989 warranty deed or contract, and we see no error in this. Overall, then, we agree with the trial court's conclusion that the Plaintiffs have failed to show circumstances sufficient to give rise to a resulting trust or to warrant the imposition of a constructive trust. The trial court's decision on this issue is affirmed.

The Plaintiffs also contend that the trial court erred in declining to find that the March 14, 1989 deed was obtained by undue influence. This Court, in ***Gibson v. Gibson***, explained the doctrine of undue influence as follows:

> [U]ndue influence applies "when one party, such as a grantee, is in a position to exercise undue influence over the mind and the will of another, such as a grantor, due to the existence of a confidential relationship." A party seeking to rescind a deed based on this doctrine has the burden of proving (1) that a confidential relationship existed between the parties wherein the grantee was the dominant party, and (2) that the transaction conferred a benefit on the grantee. Once the party proves these

> elements, a presumption arises that the deed was procured by undue influence. The burden then shifts to the grantee to prove, by clear and convincing evidence, that the transaction was fair and was not the result of undue influence. If the grantee fails to carry this burden, the transaction is presumed void.

No. W2004-00005-COA-R3CV, 2004 WL 2464271, at *4 (Tenn. Ct. App. Nov. 2, 2004) (quoting ***Brown v. Weik***, 725 S.W.2d 938, 945 (Tenn. Ct. App. 1983)) (citations omitted). A confidential relationship exists " 'where confidence is placed by one in the other and the recipient of that confidence is the dominant personality, with the ability, because of that confidence, to influence and exercise dominion over the weaker or dominated party.' " ***Id.*** (quoting ***Iacometti v. Frassinelli***, 494 S.W.2d 496, 499 (Tenn. Ct. App. 1973)).

The Plaintiffs assert that Daniel Pittman "occupied the position of a trusted fiduciary" in relation to his parents, Mr. and Mrs. Pittman, and that he abused his "trusted" position when he procured the signatures of Mr. and Mrs. Pittman on the March 14, 1989 warranty deed and contract, recorded the warranty deed, and thereafter maintained possession of the deed. However, as emphasized by the trial court, the term most often used to describe Mr. and Mrs. Pittman in the testimony was "strong-willed." Indeed, this was acknowledged by Mr. and Mrs. Pittman's grandson, William Pittman. The evidence does not preponderate against the trial court's finding of no undue influence, and the decision below is affirmed in this regard as well.

The fourth issue presented on appeal concerns the circumstances surrounding the November 11, 1993 will of Mrs. Pittman. Of course, a "testator can, by will, only convey such property as the testator has and only such interest as the testator has in the property." 95 C.J.S. *Wills* § 53 (2001) (footnotes omitted). Therefore, this issue is pretermitted by our holdings above.

The decision of the trial court is affirmed. Costs of this appeal are to be taxed to Intervening Plaintiffs/Appellants William Lynn Pittman, Deana Renea Pittman Slemp, David Dewayne Pittman, and Sheila Pittman Johnson, and their sureties, for which execution may issue, if necessary.

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HOLLY M. KIRBY, JUDGE